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The Title Wave: Film, TV Lawyers Are Busy Checking Out Names

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They Seek to Avert Lawsuits By Culling Out Used Items; Does a Title Outdraw a Star?

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"Okay, C. B., baby, we'll sign up Loren and Brando and make ourselves a smasheroo."

"Forget the stars, sweetheart. Just find me a good title."

This Hollywood conversation is imaginary, but the point is real: For a movie or television show, it's often the title that does much to determine the success. "You tell me the title and I'll tell you how much it will gross," a movie mogul is alleged to have remarked. James Nicholson, president of American International Pictures, a film maker and distributor, estimates a title determines as much as 70% of the movie's gross.

This being the case, the movie and TV companies make every effort to insure that no one steals their titles and that the titles they choose haven't been inadvertently stolen from someone else, which would make them vulnerable to suits. As a result, title searching has become a thriving business.

16 Years of TV Guide

The two major law firms in the East that specialize in such title searches report a growing business, and New York lawyer James R. Parish, recently given a "solid gold mine" of "16 years of (past issues of) TV Guide" magazine, is entering the field in hope of becoming a specialist in television-title research.

The lawyer in charge of title clearance for one television network presides over a four-man clipping and filing bureau that has squirreled away "an arsenal" of used titles. He estimates the cost of a routine title check for a network program is as much as $100. As the network checks out 500 to 600 titles a year, its costs total as much as $60,000.

Whether a title is clear or not isn't a simple matter. A title, unlike the contents of a book, movie or play, is not covered by copyright laws but rather is governed by laws of unfair competition. Because there are no rigid standards for determining what is unfair, judges have issued conflicting opinions when asked to decide who holds title to a title.

Because a title can't be copyrighted, its link with any movie is forged by constant association with the production. Thus, when two movie biographies entitled Harlow were released within weeks of each other last year, neither film company could prove it had made its title famous through exploitation.

Yet, when the exact title has never been used before it still isn't always clear. Warner Bros. Pictures, Inc., a while ago convinced a court to issue an injunction against an author who planned to title his book Sex and the Single Man. At the time, the film company was making a movie called Sex and the Single Girl—a title for which it paid $100,000.

Double Safe

A movie company seldom buys a title without a thorough check to make sure it is clear. Often, in fact, a producer will ask both major search firms—the New York law firm of Johnson & Tannenbaum and the Washington law firm of Fulton Brylawski—to check out the same title. "When a company pays a couple of million dollars for the film rights to a book," says Theodore R. Kupferman, a newly elected Congressman who had been a copyright lawyer in New York, "it can't take the chance that somebody else has used that same title first and is prepared to sue."

Samuel W. Tannenbaum, the surviving partner of Johnson & Tannenbaum, has almost single-handedly kept the three-by-five index-card business alive over the years. Most of the space in his offices is given to the storage of "nine million to ten million" index cards with listings of every traceable mention in print of titles of books, plays, television shows, movies and radio broadcasts.

Mr. Brylawski says he has fewer index cards—"just several million"—but he notes his office is within walking distance of the Government's Copyright Office and the files of the Library of Congress.

Mr. Brylawski, who started his practice in 1914, says he got into the business because "when I got out of law school my father had some movie theaters and I noticed that movie companies then bought titles without investigating. So I told them, 'You wouldn't buy real estate without investigating if somebody else held the title' and I sold them a bill of goods."

The attorneys decline to say how much they charge, but it is believed the fees generally range from less than $50 to $85 per search. Whatever the expense, it usually is a worthwhile investment, many movie and TV men say. The attorney for the television network says that as a result of his staff's thorough searches the network has been sued only once for title infringement.

That one time, he says, occurred when a producer overrode the legal department's objections and insisted upon the title. "Maybe it was worth it, anyway," he says. "The title was good and the suit wasn't that costly."